



Chief
Marine Mammal Conservation Division
ATTN: ZMRG, Office of Protected Species
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Sept. 8, 2003

RE: For the Record:
Federal Register Notice Vol. 68; No.131;
Wednesday, July 9, 2003.
50 CFR Part 229; Docket Number 030630163-3163-01;
I.D. 052303F; RIN 0646-AR15; "Zero Mortality Rate Goal"

VIA FAX: (301-713-0376

To Marine Mammal Conservation Division:

The International Marine Mammal Project of Earth Island Institute would like to add the following comments to the Record of the Zero Mortality Rate Goal pursuant to the Marine Mammal Protection Act (MMPA).

Zero Mortality Means "Zero", as in NONE:

In our view, Congress clearly intended that the "zero mortality rate" of mortality of marine mammals be zero, as in NO marine mammals.

Attempts to weaken this mandate by redefining "zero mortality rate" to some acceptable level of kill, incidental or not, is neither in keeping with Congressional intent nor in keeping with public expectations of NMFS and the Dept. of Commerce. We believe such a new definition allowing any additional mortality would violate the clear language of the MMPA.

The "zero mortality rate goal" was adopted by Congress in response to the intentional chasing and netting of dolphins in the Eastern Tropical Pacific tuna fishery, as noted in the Federal Register Notice (p. 40889, "History of the ZMRG"). In that particular case, as the vast majority of dolphin mortality is caused by the deliberate chasing and netting of dolphins, simply stopping the practice of setting nets on dolphins eliminates all but a handful of mortality caused by school and floating object net sets. Such additional mortality from school and floating object net sets can be further reduced through increasing care in releasing marine mammals accidentally encircled during fishing operations.

It may indeed be useful to use goals such as tying in mortality to PBR levels for marine mammal populations for commercial fisheries, but ONLY on an interim basis, in our opinion. The goal of the MMPA is NO mortality, not SOME mortality, and that goal is regardless of the biological impact. The MMPA was not passed to conserve marine mammals, but to protect them. Schemes to allow continued harm, harassment, injury, and mortality to some marine mammals are not acceptable or legal.

Use of One Nongovernmental Organization's Opinions Is Misleading and Unacceptable:

Page 40890, paragraph 8 of the Federal Register Notice cites the opinion of the Center for Marine Conservation (now called the Ocean Conservancy) to justify continued kill of dolphins in the ETP and equate mortality below PBR levels as constituting "zero mortality". This reference is unacceptable and misleading.

Earth Island Institute and dozens of other organizations, members of the Dolphin Safe/Fair Trade Campaign, have repeatedly sent comments to NMFS about the need to maintain the "zero mortality rate goal" in the original terms of the MMPA with regard to dolphin mortality in the ETP tuna fishery, not in terms of PBR or other supposedly biologically "insignificant" terminology. Why is the testimony of ONE organization singled out for quotation, when other groups have never taken such a radical and unacceptable position?

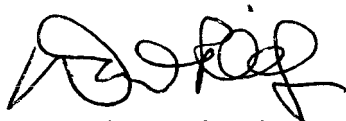
The date of the statement was 1997; since that time, due to research conducted by the National Marine Fisheries Service, it has become clear that the reported dolphin mortality in the ETP tuna fishery, to which the original Center for Marine Conservation statement referred, is not accurate. Dolphin populations are not recovering in the ETP, and the cause is further fishery mortality that is not being recorded by observers.

Levels of Mortality in Many Fisheries are Unknown:

The ETP fishery example points out another hazard of the use of an "acceptable" level of mortality for marine mammals: It assumes that NMFS has access to accurate information on levels of marine mammal mortality from different fishery causes. In fact, little of this information is available, and what information that is available is not necessarily reliable, so basing any mortality limits on assumed levels of mortality is likely to fail to give adequate protection to marine mammals.

Zero mortality, meaning no killing or injuring of any marine mammals, is a goal that NMFS and commercial fisheries should be striving for at all times. Allowing any weakened definition for zero mortality is simply outrageous.

Sincerely



David Phillips
Executive Director



Mark J. Palmer
Assistant Director